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General Docket

US Court of Appeals for the First Circuit

Court of Appeals Docket #: 02-2117

Filed: 9/3/02

Nsuit: 0 (Criminal or NOT SET)

Morgan, et al v. INS

Appeal from: U.S. Immigration & Naturalization Serv.

Lower court information:

District: 0090-1 : A70-868-672

lead: A76-117-960

Date Filed: **/**/**

Date order/judgment: 7/29/02

Date NOA filed: **/**/**

District: 0090-1 : A76-117-960

lead: A76-117-960

Date Filed: **/**/**

Date order/judgment: 7/29/02

Date NOA filed: **/**/**
-----Fee status: paid

Prior cases:

None

Current cases:

None
-----Panel Assignment:

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PetitionerSaher Joseph Macarius
(See above)
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v.

IMMIGRATION AND NATURALIZATION
SERVICE

Respondent

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MOURCOS MORGAN; EREIN IBRAHIM

Petitioners

v.

IMMIGRATION AND NATURALIZATION SERVICE

Respondent

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9/3/02 AGENCY CASE docketed. Opening forms sent. Rev/Appl Notice filed by Petitioners Mourcos Morgan and Erein Ibrahim. Certificate of Service date 9/3/02. Appearance due 9/17/02. Certified List Due 10/15/02. [02-2117] (cmpa)

9/3/02 MOTION filed by Petitioners Mourcos Morgan and Erein Ibrahim. "Petitioner's Motion for A Stay of Deportation Pending Resolution of Petition for Review" Certificate of service dated 9/3/02. [02-2117] (cmpa)

9/4/02 PUBLIC NOTE: BIA Decision sent via fax by Attorney Macarius. [02-2117] (cmpa)

9/12/02 RESPONSE filed by Respondent INS. "Respondent's Opposition to Petitioners' Motion for a Stay of Removal" Certificate of service dated 9/12/02. [686081-1] [02-2117] (cmpa)

9/16/02 APPEARANCE filed by Saher Joseph Macarius for Petitioners Erein Ibrahim and Mourcos Morgan. [687021-1] [02-2117] (cmpa)

9/16/02 DOCKETING STATEMENT filed by Petitioners Mourcos Morgan and Erein Ibrahim. [02-2117] (cmpa)

9/18/02 MOTION filed by Respondent INS to dismiss case. [687641-1] "Respondent's Motion to Dismiss Untimely Petition for Review for Lack of Jurisdiction, and Request to Hold Briefing Schedule and Submission of the Administrative Record in Abeyance Pending Resolution of this Motion" Certificate of service dated 9/17/02. [02-2117] (cmpa)

9/18/02 ATTORNEY Terri Jane Scadron and Janice K. Redfern for
Respondent INS added to case. [02-2117] (cmpa)

10/2/02 RESPONSE filed by Petitioners Mourcos Morgan and Erein
Ibrahim. "Petitioner's Opposition to Respondent's Motion to
Dismiss" Certificate of service dated 10/1/02. [691937-1]
[02-2117] (cmpa)

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10/16/02 JUDGMENT. Senior Circuit Campbell, Senior Circuit Judge
Stahl, and Circuit Judge Lynch. The government moves to
dismiss this petition as untimely. A petition for review
of an order of removal "must be filed not later than 30
days after the date of the final order of removal." 8
U.S.C. § 1252(b)(1). See Nascimento v. I.N.S., 274 F.3d
26, 28 (1st Cir. 2001). Here, the Board of Immigration
Appeals entered its final order on July 29, 2002.
Petitioners should have filed their petition on or before
August 28, 2002. They waited until September 3. We
therefore lack jurisdiction to hear the petition.
Petitioners contend that they should get the benefit of an
extra "3 calendar days" under Fed. R. App. P. 26(c). By its
terms, however, Rule 26(c) applies only "[w]hen a party is
required or permitted to act within a prescribed period
after a paper is served on that party[.]" That is not the
case here. The appeals period runs from "the date of the
final order," as the statute says, not from the date of
service, as Rule 26(c) contemplates. See Malvoisin v.
I.N.S., 268 F.3d 74, 75 (2nd Cir. 2001) (where BIA rendered
final order on December 1, 2000, "[b]ecause December 31,
2000 fell on a Sunday and January 1, 2001, was a holiday,
the effective final day for Malvoisin to file her petition
was January 2, 2001"; petition filed on January 3 was
untimely); Torres v. I.N.S., 144 F.3d 472, 473 (7th Cir.
1998) (where BIA entered final order on December 17, 1996,
"the deadline was January 16, 1997"). The Motion to Dismiss
Untimely Petition is allowed and the petition is dismissed.
Petitioners' Motion for a Stay of Deportation Pending
Resolution of Petition for Review is denied as moot.
[695098-1] [02-2117] (cmpa)

2/25/03 MANDATE ISSUED. [02-2117] (cmpa)

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